

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of: Case No. 12-12020-mg

5 RESIDENTIAL CAPITAL, LLC, et al.,

6 Debtors.

7 - - - - -x

8 In the Matter of: Case No. 12-12019-mg

9 RESIDENTIAL CAPITAL FUNDING COMPANY, LLC, et al.,

10 Debtors.

11 - - - - -x

12 JENKINS, ET AL.,

13 Plaintiffs,

14 -against- Adv. Proc. No. 12-01935-mg

15 RESIDENTIAL FUNDING COMPANY, LLC, ET, AL.,

16 Defendants.

17 - - - - -x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, New York

21 February 7, 2013

22 10:14 AM

23 B E F O R E:

24 HON. MARTIN GLENN

25 U.S. BANKRUPTCY JUDGE

12-12019-mg Residential Funding Company, LLC Ch. 11

Adversary proceeding: 12-01935-mg Jenkins et al v.

Residential Funding Company, LLC et al

(CC: Doc no. 1) Adjourned Pre-trial Conference

12-12020-mg Residential Capital, LLC Ch. 11

(CC: Doc# 2648) Debtors Motion for Order Under 11 U.S.C.

105(a) and 365(a), Fed. R. Bankr. P. 6006 and 9014 and Local

Bankruptcy Rule 6006-1 Authorizing Assumption of Unexpired

Lease Between DeVry Inc. and GMAC Mortgage, LLC.

Adj. Hearing Re: Cure Objections. (Related Document no. 61)

(Doc no. 1649) Status Update on Hearing Re: Cure Objection of  
Digital Lewisville LLC to: (I) Debtors' Motion for Orders:

(A)(I) Authorizing and Approving Sale Procedures, Including  
Break-Up Fee and Expense Reimbursement; (II) Scheduling Bid  
Deadline and Sale Hearing; etc.

(CC: Doc no. 1979) Adjourned Hearing RE: Objection of Wells  
Fargo Bank, N.A. to Debtors' Sale Motion [Docket No. 1979]

(CC: Doc no. 2069) Adjourned Hearing RE: Limited Objection of  
Ally Financial Inc. and Ally Bank to the Debtors' Proposed  
Platform Sale Motion [Docket No. 2069]

(CC: Doc# 2251) Motion for Relief from Stay filed by Michael  
Wheeler.

(CC: Doc# 2646) Motion for Relief from Stay  
Moot Motion has been resolved by stipulation. The Debtors will  
present the stipulation at the hearing.

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24 ALSO PRESENT: (TELEPHONICALLY)

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here on  
3 Residential Capital, number 12-12020. We're going to begin  
4 with a report from the examiner's counsel.

5 Mr. Seife?

6 MR. SEIFE: Thank you, Your Honor. Howard Seife,  
7 Chadbourne & Parke, counsel for the examiner.

8 We'd like to give the Court an update, a status report  
9 on our activities. To date, we've received, through  
10 production, approximately 1.1 million documents, which amount  
11 to more than seven and a half million pages, and they come from  
12 twenty producing parties.

13 We have, to date, completed fifty interviews, and we  
14 have seventeen additional scheduled, and perhaps an additional  
15 twenty-five or so that remain to be scheduled.

16 When we were last here in court to give you a status  
17 report, we at that time anticipated delivery of the report by  
18 early April. And as we discussed on the record, that date,  
19 however, was contingent upon the production of documents from  
20 parties on a timely basis and on a rolling basis, such that we  
21 could review them in a timely fashion and use them, as  
22 appropriate, for interviews and for incorporation in the  
23 report.

24 As we reported to Your Honor in chambers,  
25 unfortunately, there's been an enormous delivery of documents

1 at the end of January and early February, far in excess of what  
2 we anticipated and what would have complied with a rolling  
3 production. Faced with this additional two million-plus pages  
4 of recently produced documents from the debtors, it will  
5 require reassessment of the ability to complete the report as  
6 we had previously hoped.

7 So given all of the elements which would be required  
8 to review this new and very substantial document production, to  
9 incorporate it into interviews, to perhaps recall some of the  
10 parties already interviewed for additional questioning, we now  
11 anticipate a delay and rescheduling for an anticipated time of  
12 filing the report to early May, so that would be an additional  
13 month.

14 The examiner certainly regrets the inability to  
15 produce a report, as anticipated, in early April, but this  
16 unanticipated production no longer makes that a feasible date.  
17 So with Your Honor's permission, we're suggesting a later  
18 delivery of the report.

19 THE COURT: Just if you could, tell me what, if any,  
20 additional document requests are outstanding, not the specific  
21 request, but what additional production are you anticipating?  
22 Is there a schedule for that to occur?

23 MR. SEIFE: We have requested that all parties finish  
24 their production of documents, substantial finish them, by the  
25 end of January. Most parties have complied with that. Of

1 course there are always additional follow-ups and  
2 clarifications and issues that are dealt with. However, there  
3 are some parties that have not finished production. You may  
4 recall we have conflicts counsel that came into the case; they  
5 are seeking production from four financial institutions. Those  
6 four have not finished their production. We feel at least  
7 three of them are substantially advanced; a fourth has produced  
8 a voluminous amount of documents, but there remains more that  
9 we anticipate we should have by the middle of February.

10 As to other third parties -- and my colleagues can  
11 correct me if I'm wrong -- I believe we have substantially all  
12 productions, but let me just verify that.

13 THE COURT: Okay.

14 MR. SEIFE: Ally has produced substantial amounts of  
15 documents. There remain some issues in dispute that we are  
16 working through with Ally. Without getting into the details,  
17 because the parties are trying to resolve it, there are some  
18 what we refer to as clawback requests. Parties have produced  
19 documents, reserving their right on privilege issues to  
20 clawback some documents that were either inadvertently produced  
21 or improperly produced, and we're trying to work through those,  
22 particularly on some regulatory privileges. And if we cannot  
23 resolve that, we may be before Your Honor on an expedited basis  
24 to resolve those.

25 So that's a long way of saying we have substantially

1 received documents that we've requested, but there remain some  
2 open issues with some of the parties.

3 THE COURT: Have you had to issue subpoenas for  
4 documents, or has it all been through informal requests?

5 MR. SEIFE: We've been issuing subpoenas.

6 THE COURT: And you talked about interviews; have they  
7 been under oath or not?

8 MR. SEIFE: The interviews are recorded and  
9 transcribed; they're not under oath.

10 THE COURT: Have any of the people that you want to  
11 interview declined to be interviewed?

12 MR. SEIFE: No. Everyone we've requested, to date,  
13 has appeared. There are still some remaining, as I said, a  
14 substantial number of interviews, but to date, everyone has  
15 appeared and spoken on our recorded interviews.

16 THE COURT: Okay. I have no doubt that you and your  
17 colleagues and the examiner are working diligently to complete  
18 a very large task. I certainly believe that the completion of  
19 the examiner report is very important to progress in this case  
20 with respect to development of a plan, negotiating a consensual  
21 plan, hopefully. So getting a report completed as soon as  
22 possible, I think, is important. I have no doubt that the  
23 examiner and his professionals want to assure that the report  
24 is of the highest quality, and I really don't have any question  
25 about that. If you and your colleagues are meeting with any

1 resistance with respect to parties producing documents in a  
2 timely fashion, I want to hear about it sooner rather than  
3 later.

4           It's important, and I'm committed to do everything I  
5 can -- and the power of the pen on orders sometimes has that  
6 effect -- to enable you and your colleagues and the examiner to  
7 get everything you need so that you can complete the report as  
8 quickly as possible. So I can't emphasize enough that yes, I  
9 hope you will be able to consensually resolve issues, things --  
10 you know, you raised the issue about clawback and privileges,  
11 and in any substantial production those issues always arise,  
12 and virtually always they get worked out, where the lawyers are  
13 capable lawyers. And I'm not trying to get into the middle of  
14 that process at all, but it has to happen quickly, so that if  
15 you need a hearing with respect to a discovery dispute, you  
16 call chambers, and you'll -- in virtually all instances, you'll  
17 have a hearing that day or the next day, usually, in the first  
18 instance, by telephone. I don't want letter briefs or anything  
19 unless and until I've heard the parties out; I'm usually able  
20 to resolve it. But just in all matters, any kinds of discovery  
21 disputes, they get heard very, very promptly. So I just  
22 encourage you, if you need to -- I mean, in the first instance,  
23 I hope you'll resolve things as they're usually done,  
24 consensually.

25           It's very important, in my view, to the progress in

1 this case, that the report be done in early May. And if things  
2 occur that you think raise questions about it, I want to hear  
3 about it immediately and not in April. Okay. And we have to  
4 see if there's anything that can be done to keep the process  
5 moving to make sure it's done. But I appreciate your report,  
6 Mr. Seife, and I certainly appreciate the work of you and your  
7 colleagues and of the examiner.

8 MR. SEIFE: I would just add, Your Honor, the examiner  
9 is fully cognizant of the importance of the report to this case  
10 and progress in the case, and he and his professionals are  
11 fully committed to working as hard as we can and in an  
12 expedited fashion as possible to get it done, and --

13 THE COURT: Thank you very much.

14 MR. SEIFE: -- we appreciate your offer of assistance.

15 THE COURT: All right, thank you.

16 MR. SEIFE: Thank you, Your Honor.

17 THE COURT: Does anybody else want to be heard on the  
18 subject of the examiner report?

19 All right. Let's go on to the agenda, Mr. Rosenbaum.  
20 And anyone who was for this is certainly excused.

21 MR. ROSENBAUM: Good morning, Your Honor. Norm  
22 Rosenbaum, Morrison & Foerster for the debtors.

23 Your Honor, it's a relatively short calendar this  
24 morning. We've noted all the adjourned matters, and the first  
25 matters on for today are on page 5 under resolved matters.



1 THE COURT: Yes.

2 MR. ROSENBAUM: The first matter was the motion of  
3 JPMorgan Acquisition Corporation for relief from stay; that's  
4 docket number 2646. That's been resolved among the parties and  
5 a stipulation will be presented to the Court.

6 THE COURT: Okay. And that will be approved.

7 Go ahead.

8 MR. ROSENBAUM: The next matter is under Roman numeral  
9 III, uncontested matters. This is the debtors' motion for an  
10 order authorizing the assumption of unexpired lease; that's  
11 docket number 2648. That is uncontested, and an order will be  
12 submitted to chambers.

13 THE COURT: All right. Anybody wish to be heard?

14 All right. That'll be approved.

15 Go ahead.

16 MR. ROSENBAUM: Your Honor, that brings us to the cure  
17 objections, and there's a couple matters to be discussed. One  
18 of the issues I don't think we properly noted here was the  
19 scheduling conference on the objection interposed by Ambac to  
20 the sale order and the cure objection. We've had discussions  
21 with chambers on dates. Mr. Dykhous is in the courtroom, and  
22 Mr. Marco as well. I think one of the -- I think where we're  
23 coming out is, if necessary, the parties are prepared to go  
24 forward on March 29th; Your Honor had offered that date. I  
25 think that did present a problem because it is Good Friday.

1 THE COURT: Yeah, I think I heard about that  
2 yesterday, and I think I said we would and try and work out  
3 dates that will work. Certainly anyone who has a problem with  
4 coming here on Good Friday, I respect that.

5 (Pause)

6 THE COURT: I had a telephone -- for those who weren't  
7 party to this, I had a telephone conference with counsel about  
8 this dispute and about scheduling. And one of the questions I  
9 had then -- I don't know whether you've been able to discuss  
10 it -- is, I mean, how many witnesses. I know we talked about  
11 written direct, but I raised the question about whether you're  
12 going to be able to stipulate to facts or whether you think we  
13 need live testimony, cross-examination of declarants. Were you  
14 able to firm that up at all?

15 MR. ROSENBAUM: Your Honor, Norm Rosenbaum. We  
16 haven't firmed it up. We discussed the possibility and the  
17 likelihood that we would stipulate to facts. I think, at most,  
18 it would be three witnesses, but no more than three witnesses:  
19 one for Ambac, and potentially two for the debtors.

20 (Pause)

21 THE COURT: All right. I'll have to move some things  
22 around, but let's schedule this for Thursday the 28th, March  
23 28th, at 2 p.m. I've got a calendar in the morning. I had a  
24 calendar in the afternoon. Jeannie and Alex will move Velo  
25 from the 28th. I'm assuming that one afternoon should be

1 enough. Hopefully you'll be able to stipulate to facts, but it  
2 sounds like limited cross-examination in any event. So --

3 MR. ROSENBAUM: And noncontroversial legal principles.  
4 So --

5 THE COURT: Oh, really? I'm sure.

6 MR. ROSENBAUM: -- we're not going to be --

7 THE COURT: For noncontroversial legal principles, why  
8 don't you just settle the matter?

9 MR. ROSENBAUM: We're hoping --

10 THE COURT: That still may happen.

11 MR. ROSENBAUM: -- hoping that the hearing won't be  
12 necessary. That's clearly our objective.

13 THE COURT: All right. So we'll -- but what I'm going  
14 to do is hold off on rescheduling the other matters. I will do  
15 so if need be. I'm going to leave them for now, and so give me  
16 a written status report by 5 p.m., Thursday, March 14th. I'm  
17 going to hold off rescheduling my afternoon -- that afternoon  
18 calendar for the hearing. So that gives you time to hopefully  
19 get this done. Don't wait until the last minute before the  
20 status report, but -- and what I indicated, what I would like  
21 you to do is put together a stipulation, and what I told you on  
22 the phone, my standard operating rule is that I get everything  
23 a week before. So I would want a full package of briefs,  
24 declarations -- I don't know, is discovery going to be needed,  
25 Mr. Dykhous, or is --

1 MR. DYKHOUSE: We don't believe so, Your Honor.

2 THE COURT: Mr. Rosenbaum, do you --

3 MR. ROSENBAUM: There may be limited discovery.

4 THE COURT: Well, if -- you'll work that out. If you  
5 can't, call chambers and we'll work it out. But so, I mean, I  
6 literally -- I want everything that -- documents, exhibits need  
7 to be pre-marked for the hearing. The debtors should use  
8 numbers. Ambac should use letters. Every -- because the  
9 reporter doesn't mark exhibits, so everything needs to be pre-  
10 marked. I want two copies of all exhibits delivered to  
11 chambers by the 21st. Briefs should be filed on ECF by then.  
12 So a week before is 2 p.m. on the 21st for everything. This  
13 doesn't strike me as a matter where there's going to be motions  
14 in limine or anything, but it just -- so just get me  
15 everything, because I like to have a week to be able to make  
16 sure that I'm fully prepared for a hearing. Okay? And I gave  
17 you the date for a status report. Hopefully you'll be able to  
18 get it resolved. Okay?

19 Anything else, Mr. Dykhouse?

20 MR. DYKHOUSE: No, Your Honor.

21 THE COURT: Okay. Mr. Rosenbaum, on this?

22 MR. ROSENBAUM: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MR. ROSENBAUM: Your Honor, moving on on the agenda,  
25 the next matter is at page 8 of the status report on the

1 Digital Lewisville matter, and I'll turn the podium over to my  
2 colleague, Stef Engelhardt.

3 MR. ENGELHARDT: Good morning, Your Honor. Stefan  
4 Engelhardt, Morrison & Foerster on behalf the debtors.

5 Your Honor, I'm pleased to report that the parties  
6 have reached an agreement in principle on a resolution that  
7 will allow the assumption and assignment of the Digital Lease  
8 to Ocwen prior to the closing. We expect to finalize the  
9 papering of that stipulation this afternoon and file it for  
10 presentment before Your Honor later today.

11 I do believe that counsel from both Ocwen and Digital  
12 Lewisville are here, and with Your Honor's indulgence, I  
13 believe there are some matters they'd like to put on the  
14 record.

15 THE COURT: Okay. Thank you.

16 MR. GOLD: Good morning, Your Honor. Ivan Gold of  
17 Allen Matkins for Digital Lewisville, the landlord.

18 The issue that had been holding us up with resolution  
19 of the stipulation to permit the assignment and assumption of  
20 the lease -- and Your Honor previously entered an order  
21 approving our stipulation resolving the cure issues on January  
22 31st. Since then, counsel have been working diligently and  
23 constructively to get the remaining issues with respect to the  
24 assignment done. Our holdup had been related to Ally and their  
25 desire for a sublease to effectuate the transition services

1 agreement. We've got enough closure with Ally; as of literally  
2 this morning I received an e-mail at 10:17, pretty much as Your  
3 Honor was taking the bench, as big a breakthrough as we've had  
4 in weeks. But we've been -- we will be able to, effectively,  
5 draft around it. But since that's not going to be final --  
6 it'll be provided for in the stip -- I've been asked to state  
7 on the record that Digital will agree to consent to a  
8 commercially reasonable form of sublease for a term of no more  
9 than eighteen months in order to accommodate the implementation  
10 of the TSA with respect to the Lewisville facility. And pre-  
11 closing, we will execute a commercially reasonable form of  
12 consent to the sublease to allow that sliver to go forward.

13 With respect to Mr. Engelhardt's comments about us  
14 being able to do it this afternoon, literally, Your Honor, all  
15 of the final changes are on a single page, and here it is. So  
16 we will head back and implement that and upload that for you  
17 later today.

18 THE COURT: Good luck.

19 MR. GOLD: Thank you.

20 THE COURT: Thank you very much.

21 MR. ENGELHARDT: Your Honor, nothing further.

22 THE COURT: Thank you very much, Mr. Engelhardt.

23 MR. ENGELHARDT: Thank you.

24 THE COURT: Okay.

25 MR. ENGELHARDT: With that, I'll turn the podium over

1 to --

2 THE COURT: Let's hold on.

3 MR. ENGELHARDT: -- Mr. Goren.

4 THE COURT: Hold on.

5 MR. ZIDE: Stephen Zide from Kramer Levin on behalf of  
6 the committee.

7 THE COURT: Mr. Zide?

8 MR. ZIDE: We didn't know about this settlement, so I  
9 guess they could file it, it'll be on presentment, we'll have a  
10 chance to review it, but --

11 THE COURT: Why don't you try and see it even before  
12 they file it, if you can resolve that or any issues before,  
13 because to have them file it and then you want tweaks or  
14 something, it just is another whole round. So why don't you  
15 see -- if it's held up from filing until tomorrow to allow the  
16 committee to get its look at it, that would probably be better  
17 than filing and then having it on presentment and then having  
18 amended agreements filed. All right? All right, okay.

19 MR. ZIDE: Thank you, Your Honor.

20 THE COURT: I think that's what you ought to do.

21 MR. ENGELHARDT: Your Honor, Stefan Engelhardt,  
22 Morrison & Foerster. We will definitely attempt to get that  
23 worked out this afternoon. Under Your Honor's January 31st  
24 order regarding the settlement of the cure claim, the debtors'  
25 time to reject or assume that lease expires today.

1 THE COURT: Okay.

2 MR. ENGELHARDT: So we'll have to get that filed --

3 THE COURT: Well --

4 MR. ENGELHARDT: -- unless Mr. --

5 THE COURT: -- let me see. Go ahead.

6 MR. GOLD: Let me solve that problem, Your Honor.

7 First, with respect to the committee's concern, first off,  
8 there is no new monetary consideration flowing from the debtor  
9 to effectuate this phase, so I expect the committee's review  
10 will be very short.

11 THE COURT: Okay. Why don't you just agree on the  
12 record --

13 MR. GOLD: But I would be happy to --

14 THE COURT: -- to extend the --

15 MR. GOLD: -- facilitate their review by agreeing to  
16 extend the time to assume or reject under 365(d)(4) to  
17 tomorrow, to allow this to be uploaded.

18 THE COURT: 5 o'clock tomorrow?

19 MR. GOLD: Certainly, Your Honor, and I'll circulate  
20 an e-mail today, so --

21 THE COURT: Okay. It's on the record. Your  
22 agreement's on the record.

23 MR. GOLD: Okay.

24 THE COURT: I think everybody -- you know, circulate  
25 an e-mail, but I appreciate that --



1 MR. GOLD: Not a problem.

2 THE COURT: -- Digital Lewisville has agreed to extend  
3 the debtors' time to assume or reject until 5 p.m. tomorrow.

4 MR. GOLD: Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 MR. ENGELHARDT: With that, Your Honor, I will turn  
7 the podium over to my colleague, Todd Goren.

8 THE COURT: Thank you.

9 Mr. Goren?

10 MR. GOREN: Thank you, Your Honor. Todd Goren,  
11 Morrison & Foerster, on behalf of the debtors.

12 Two other cure matters we'll address very briefly for  
13 Your Honor. The first is the Wells Fargo cure objection. As  
14 we reported at the January 31st hearing, we had reached an  
15 agreement in principle on that. That agreement has now been  
16 substantially documented.

17 We received some comments from the committee last  
18 night on that stipulation. We've reviewed them with Wells'  
19 counsel who advised he believes they're acceptable but still  
20 needs to confirm with his client. So hopefully we'll get that  
21 confirmation later today and we'll upload it for presentment  
22 later today.

23 THE COURT: Thank you very much.

24 MR. GOREN: Then finally, Your Honor, we have the AFI  
25 cure objection, which I believe has also been resolved. There

1 should not be a stipulation required on this one. The  
2 resolution is sort of multi-faceted since there are several  
3 different agreements. One of the agreements is the  
4 subservicing agreement that was the topic of dispute earlier in  
5 the case. That agreement is not being assumed and assigned to  
6 Ocwen. It will be subserviced through Ocwen under an estate  
7 subservicing agreement, so there's no real assumption and  
8 assignment issue with that one.

9           There is also a custodial agreement that was  
10 originally going to be assumed and assigned to Ocwen, and Ocwen  
11 has now determined it will just enter into a new custodial  
12 agreement directly with Ally. So I think Ocwen was still  
13 confirming 100 percent, but I think everyone's understanding,  
14 at this point, that that agreement is no longer being assumed  
15 and assigned.

16           And then the final agreement was a master servicing  
17 agreement. With respect to that, Ally doesn't really believe  
18 that there's any cure owed on that. That agreement is being  
19 assumed and assigned to Ocwen. But what we've agreed to do  
20 with Ally, just so they can confirm everything, is that we'll  
21 give them sixty days, post-close, to assert the cure. They've  
22 agreed to cap that cure claim at 100,000 dollars. And to the  
23 extent there's any cure owed over and above that, it would be a  
24 general unsecured claim.

25           THE COURT: Thank you.

1 MR. GOREN: We've reviewed that with the committee and  
2 they found that acceptable as well.

3 THE COURT: Thank you, Mr. Goren.

4 MR. GOREN: Yep. That's it, Your Honor.

5 THE COURT: Thank you.

6 MR. GOREN: And I'll turn it over to Samantha Martin  
7 for the next matter.

8 THE COURT: Ms. Martin?

9 MS. MARTIN: Good morning, Your Honor. Samantha  
10 Martin from Morrison & Foerster on behalf of the debtors.

11 The next item on the agenda is the motion for stay  
12 relief that was filed by Mr. Wheeler, docket number 2251. I  
13 believe Mr. Wheeler is on the phone, so I would defer to him to  
14 make any arguments in further support of his motion.

15 THE COURT: Okay. Mr. Wheeler?

16 MR. WHEELER: Yes, Your Honor, I am present; Michael  
17 Wheeler.

18 Your Honor, in reviewing the documents that I've  
19 provided to support the motion before the Court, the primary  
20 reason I felt compassionate for this motion is in the state of  
21 Georgia, foreclosure is a nonjudicial event. In other words,  
22 the law in Georgia relies on the honesty and the integrity and  
23 the accurate accounting of any mortgage company that would file  
24 foreclosure on anyone's property. In my situation it is two  
25 single-family residences.

1           The only way that I can fight a foreclosure action is  
2 to have leave of the automatic stay or to be released from the  
3 automatic stay so that I can file a perpetual injunction  
4 against foreclosure until my civil action is resolved in the  
5 superior court here in Georgia, or possibly moved to the  
6 federal district court in Rome, Georgia.

7           Now, I am making reference to two properties that I  
8 own, residential. One is my Victoria Way property here in Cobb  
9 County, Georgia. And the other referenced property is 6 London  
10 Court in Cartersville, Georgia. I've owned these homes  
11 eighteen and thirteen years. I am the original owner of both  
12 homes which were new.

13           In my documents provided to the bankruptcy court, I  
14 stipulated that the amount of money regarding my monthly  
15 payments that I've made to both before-mentioned mortgages,  
16 that 71,000 dollars was missing. And the court has photocopies  
17 of the checks that made those monthly mortgage payments for  
18 which I never received credit. An update to that amount is now  
19 beyond 74,000 dollars. And this is an important aspect; in the  
20 last week I have been flooded with letters from a local law  
21 firm, apparently retained by GMAC Mortgage, announcing  
22 foreclosure has started on both properties.

23           So no other way that I can put this: GMAC has placed  
24 me -- or excuse me, I have been trapped in a very severe  
25 Catch-22 situation. So I am asking this Court to grant me

1 relief from the automatic stay so that I may: one, protect my  
2 properties; two, that I may continue with my civil action  
3 against GMAC in the superior court of Cobb County, Georgia.  
4 And I further ask that the Court do not leave me a position  
5 where I cannot protect my property until the civil action that  
6 I just stated is completely resolved.

7 Other than that, Your Honor, there's not much I can  
8 add. The documents that I provided with my motion pretty much  
9 spell out everything that has taken place in the past ten-plus  
10 years. So I revert back to you, Your Honor. Thank you.

11 THE COURT: Thank you, Mr. Wheeler. Let me hear from  
12 Ms. Martin.

13 MS. MARTIN: Sure. Your Honor, I guess we have  
14 several responses to what is in the papers as well as what was  
15 just stated on the record by Mr. Wheeler.

16 MR. WHEELER: Your Honor, this is Michael Wheeler. I  
17 can barely hear the person speaking.

18 THE COURT: Okay. She's going to pull the microphone  
19 closer to her, Mr. Wheeler. If you can't hear, just go ahead  
20 and speak up; it's important that you hear the arguments.  
21 Okay?

22 MR. WHEELER: Okay, thank you.

23 THE COURT: Go ahead, Ms. Martin.

24 MS. MARTIN: Your Honor, to start with, I should note  
25 that the debtors actually do not object to Mr. Wheeler's

1 limited stay relief, solely for the purpose of allowing him to  
2 pursue his claims for monetary relief in the state court  
3 action. Mr. Wheeler has litigation pending in the superior  
4 court for Cobb County, Georgia, which is near ready for trial,  
5 and that case has been pending since 2005. He filed two proofs  
6 of claim in these cases that appear to relate to that  
7 litigation, and continuing this litigation through the trial  
8 would allow him to liquidate his claims in these cases, so we  
9 have no issue with that.

10 In other respects, Your Honor, we believe that the  
11 automatic stay should remain in effect and should enjoin Mr.  
12 Wheeler from enforcing any monetary award obtained in the  
13 action against the debtors and their estates. We believe he  
14 could amend his proof of claim to reflect the final amount of  
15 any judgment that's awarded in those actions. And to the  
16 extent that the debtors are found to have no liability, then  
17 those proofs of claim could be deemed disallowed.

18 And with respect to Mr. Wheeler's comments regarding  
19 the foreclosure, just to elaborate, on the two properties that  
20 he owns, one of them the loan was referred to McCurdy & Candler  
21 for foreclosure in December of 2012, and there's no sale date  
22 set yet on that one.

23 And with respect to the London Court property, a new  
24 breach letter was recently sent to Mr. Wheeler on January 30th.  
25 The breach would expire on March 6th of 2013. So if he

1 reinstates his account by that time, then the foreclosure would  
2 not be started. And if he does not reinstate his account, it  
3 will be referred to foreclosure after March 6th.

4 Those foreclosure concepts are separate and apart from  
5 the action that's been pending since 2005. And as Your Honor  
6 knows, under the supplemental servicing order, Mr. Wheeler is  
7 entitled to defend himself against those foreclosures.

8 THE COURT: That's what I wanted to -- first, let me  
9 ask someone from SilvermanAcampora whether -- and Mr. Wheeler,  
10 the law firm of SilvermanAcampora is special counsel to the  
11 creditors' committee for borrowers' issues, and they have a  
12 lawyer present in court.

13 And my question is -- and you can make your appearance  
14 on the record -- whether you or anyone from your firm has  
15 spoken with Mr. Wheeler, most specifically about the  
16 supplemental servicing order and what that would permit, what  
17 rights that would provide Mr. Wheeler if he was seeking to  
18 avoid foreclosure on his properties.

19 MR. KRELL: Good morning, Your Honor. Justin Krell,  
20 SilvermanAcampora, special counsel to the committee.

21 Your Honor, yes, Mr. Wheeler and I have spoken  
22 directly. I explained Mr. Wheeler the debtors' proposed  
23 stipulation with limited relief to liquidate his claim. Also I  
24 advised Mr. Wheeler about the supplemental procedures order  
25 that he could defend the foreclosure action. We did have a

1 very nice conversation; however, Mr. Wheeler was adamant that  
2 he would be entitled to unfettered relief from stay based upon  
3 his claims alleged in his complaint, Your Honor.

4 THE COURT: All right. Thank you. All right. I've  
5 reviewed all of the papers and the Court's ruling is as  
6 follows.

7 Before the Court is Michael Wheeler's motion for  
8 relief from stay filed at ECF 2251. The debtors filed an  
9 objection which is at ECF 2777. The Court will lift the stay  
10 solely for the purpose of permitting Mr. Wheeler to pursue his  
11 claims for monetary relief in the context of his pending  
12 lawsuit in the Superior Court of Cobb County, Georgia which is  
13 case number 01-5-10429-34. And I'll refer to that as the  
14 action.

15 So, Mr. Wheeler, the stay is lifted to permit you to  
16 go forward with the action in order to liquidate your claims  
17 that you filed in this Chapter 11 case to the extent that they  
18 relate to that action.

19 As Mr. Wheeler indicated he's the mortgagor of two  
20 properties: 6 London Court, Cartersville, Georgia and 1728  
21 Victoria Way Northwest, Kennesaw, Georgia. The debtor,  
22 Homecomings Financial LLC services the loans on the properties.

23 Mr. Wheeler's claims in the action arise out of  
24 alleged misallocation of funds by Homecomings from 2002 to  
25 2005. And in the action, Mr. Wheeler seeks money damages



1 against Homecomings. The action does not involve or relate to  
2 any foreclosure against the properties. In the action, the  
3 Superior Court of Georgia has granted partial summary judgment  
4 in favor of Homecomings. See the order dated February 10th,  
5 2009. It's annexed to the debtors' response as Exhibit 3. The  
6 order is dated July 16th, 2012.

7 And with respect to the remaining counts not disposed  
8 of through summary judgment, the parties have completed  
9 discovery and the action is trial ready. Because the action is  
10 ready for trial, in the interest of judicial economy, the  
11 debtors do not object to a limited modification of the  
12 automatic stay for the purpose of permitting Mr. Wheeler to  
13 pursue his claims for monetary relief in the context of the  
14 action in order to liquidate Mr. Wheeler's claims in the  
15 Chapter 11 cases to the extent they relate to the action. In  
16 all other respects, however, the debtor requested the automatic  
17 stay remain in full force and effect and that Mr. Wheeler  
18 continue to be enjoined from enforcing any monetary award  
19 obtained in the action against the debtors, their assets or the  
20 estates.

21 So lifting the stay to the extent the Court is doing  
22 so will permit the Georgia court to proceed with this trial  
23 ready case and determine what, if any, damages should be  
24 rewarded to Mr. Wheeler. His proof of claims in this case  
25 should then be amended to reflect the amount of the judgment.

1 And it'll be treated the way all other claims in this case  
2 would be treated except it would've been liquidated an amount.

3 The debtors propose that any proofs or claim filed by  
4 Mr. Wheeler arising from the facts and circumstances relating  
5 the action should be amended to reflect the amount of the final  
6 judgment, if any, obtained in the action, promptly filing the  
7 entry thereof, and I agree with that. And those claims will be  
8 deemed disallowed and expunged without further order of the  
9 court to the extent that the debtors are found to have no  
10 liability to Mr. Wheeler by a final order or judgment entered  
11 in the Georgia action. Mr. Wheeler has filed two proofs of  
12 claim in the case and they're proofs of claims number 4820 and  
13 4940.

14 With respect to issues concerning foreclosure of the  
15 properties, the stay is not lifted. The supplemental servicing  
16 order carefully sets forth the rights of any borrower seeking  
17 to oppose foreclosure of their properties. And those  
18 procedures have worked quite well in many of the matters in  
19 this Residential Capital case including those specifically in  
20 Georgia and -- which is a nonjudicial foreclosure state.

21 In making the determination to lift the stay in part  
22 and deny the motion in part, the Court has carefully considered  
23 the twelve nonexclusive factors set forth by the Second Circuit  
24 in *Sonnax Industries*, 907 F.2d 1280, (2d Cir. 1990). Not all  
25 of the factors are relevant in every case and cause -- cause to

1 lift the stay -- is a broad and flexible concept. It must be  
2 determined on a case-by-case basis.

3 Applying the standard set forth in Sonmax to the facts  
4 and circumstances set forth by the parties in their papers  
5 submitted in connection with the motion, the Court concludes  
6 that it is appropriate to lift the stay in part to allow the  
7 trial to go forward in the trial ready action in Cobb County,  
8 Georgia but to deny the motion with respect to foreclosure  
9 because the supplemental servicing order already substantially  
10 sets forth the rights and protections of any borrower seeking  
11 to avoid foreclosure of their properties.

12 In the event that Mr. Wheeler, or any other borrower  
13 faced with imminent foreclosure, believes that they are  
14 entitled to some other relief from this court, they of course  
15 can seek that protection in a filed motion at an appropriate  
16 time. In this case, at this time, because the creditor's  
17 committee now has special counsel for borrower issues, I would  
18 encourage Mr. Wheeler to further confer, as needed, with a  
19 lawyer from SilvermanAcampora if Mr. Wheeler doesn't believe  
20 that -- he's clearly in at my view, adequately protected at  
21 this time -- sufficiently protected by -- and I'm not using  
22 that in a sense of the adequate protection context but his  
23 rights with respect to avoiding foreclosure are dealt with in  
24 the supplemental servicing order. And it would take something  
25 unusual to lead the Court to lift the stay beyond that. So

1 that'll be the Court's disposition.

2 Ms. Martin, if you would prepare an order reflecting  
3 the Court's ruling --

4 MS. MARTIN: Yes, of course.

5 THE COURT: -- I would appreciate it.

6 Thank you very much, Mr. Wheeler.

7 MR. WHEELER: Thank you, Your Honor.

8 THE COURT: All right.

9 MS. MARTIN: Thank you. I am going to cede the podium  
10 to my colleague, Mr. James Newton.

11 MR. NEWTON: Good morning, Your Honor. James Newton,  
12 of Morrison and Foerster, on behalf of the debtors.

13 The next item on the item on the agenda is a continued  
14 pre-trial conference in an adversary proceeding initiated by  
15 Marion L. and Sharon Jenkins. It's case number 12-01935. I  
16 believe Mr. Jenkins is on the phone; counsel for co-defendants  
17 U.S. Bank and America's Serving Company are -- is here in the  
18 courtroom. And I believe I heard counsel for Judy Faber, an  
19 employee of the debtor, on the phone as well.

20 You recall that at the prior hearing, you directed Mr.  
21 Jenkins to reach out to special borrowers counsel. Mr. Jenkins  
22 did reach out to our offices the afternoon of that hearing and  
23 the next day special borrowers counsel and I attempted to reach  
24 back out to Mr. Jenkins. We were able to speak with him only  
25 briefly. He indicated that he would like to call us back and

1 we didn't hear back from him. We've also reached out several  
2 other times since then, on Monday and then yesterday after  
3 business hours -- well, both special borrowers counsel and I  
4 have reached out to Mr. Jenkins.

5 So I'm happy to answer any questions you like, here  
6 from co-defendant's counsel as well.

7 THE COURT: All right. Mr. Jenkins, do you want to be  
8 heard?

9 MR. JENKINS: Yes, sir, Your Honor. Yes, Your Honor,  
10 the clients -- thank you for taking the call -- did reach out  
11 to me and I did try to call them back. I've been sick with my  
12 high blood pressure. But I have reached out to an attorney,  
13 Mr. David Ate which I have a meeting with tomorrow at 11  
14 o'clock and I was going to request to see if counsel for the  
15 debtor would be willing to speak with the attorney tomorrow at  
16 11:30.

17 Just got off the phone with Mr. Ate and he stated that  
18 he would be willing to speak with them tomorrow at 11 o'clock.  
19 I have to be in his office, myself and my wife, at 11 tomorrow  
20 morning. And I can give them the number now to give him a call  
21 or we could just call him tomorrow morning.

22 THE COURT: Mr. Newton?

23 MR. NEWTON: I'm willing to speak with them at 11:30  
24 tomorrow morning.

25 THE COURT: Okay. And the special borrowers counsel,

1 as well? I think you ought to be involved?

2 MR. KRELL: Yes, Your Honor. Just so you know, the  
3 past calls, Mr. Newton and I did on conference call.

4 THE COURT: Yes. And I think you should do that  
5 again.

6 I take it, Mr. Jenkins, you have no objection to the  
7 special borrowers counsel also participating in the call  
8 tomorrow?

9 MR. JENKINS: No, sir. Not at all.

10 THE COURT: Okay. So you have a phone number you want  
11 to give Mr. Newton?

12 MR. JENKINS: Yes, sir, I do.

13 THE COURT: Okay. Go ahead.

14 MR. JENKINS: You ready, Mr. Newton?

15 MR. NEWTON: Yes, sir.

16 THE COURT: Go ahead.

17 MR. JENKINS: Mr. Ate's number is (404) 348-6361.

18 That's his office number. And his direct line to his cell  
19 phone is (404) 382-5324. And the spelling of his last name is  
20 A, as in apple, T, as in Tom, E as eight. And the first name  
21 is David.

22 MR. NEWTON: Okay. All right.

23 THE COURT: All right. What we'll do then is further  
24 continue this pre-trial conference until what -- Mr. Rosenbaum,  
25 what's the next date? The 28th?

1 MR. ROSENBAUM: February 28th, Your Honor.

2 THE COURT: It's a long calendar on the --

3 MR. ROSENBAUM: There's a March 5th.

4 THE COURT: Well, let's do it the February 28th.

5 We'll get an update.

6 If, Mr. Newton, if after the call you're able to reach  
7 a resolution, please advise the Court even if it's subject to  
8 further documentation, but just let my chambers know, hopefully  
9 well in advance of the 28th.

10 Mr. Jenkins, if -- and I know there are other  
11 defendant's counsel here as well.

12 Mr. Newton, I -- if this matter can't be resolved is  
13 it the defendant's intention to move to dismiss? Is that --

14 MR. NEWTON: Your Honor, we've filed a Rule 12(e)  
15 motion. It's actually scheduled for the 28th.

16 THE COURT: Okay.

17 MR. NEWTON: I'd have to defer to other defendant's  
18 counsel, but I believe that would be their plan.

19 MR. GRIECO: Brian Grieco, Hogan Lovells for U.S.  
20 Bank --

21 THE COURT: Sure.

22 MR. GRIECO: -- and America's Servicing Company. We  
23 would file a motion to dismiss at any -- prior to any deadline  
24 you set --

25 THE COURT: Okay.

1 MR. GRIECO: -- any time after February 28th.

2 THE COURT: Well, what I -- I'm going to ask -- we're  
3 not going to put motions to dismiss on the calendar for  
4 February 28th. And we'll give it one last shot to see whether  
5 the matter can be consensually resolved without the necessity  
6 of the parties incurring additional expense of filing motions.  
7 It sounds like the debtors' already filed a 12(e) motion but  
8 so -- but I will -- if it's not resolved by the 28th, I will  
9 definitely set a schedule for filing of motions, any responses  
10 and argument. Okay?

11 MR. GRIECO: Thank you.

12 THE COURT: Anybody else wish to be heard with respect  
13 to the matter? So let me just -- let me make sure.

14 Mr. Jenkins, do you want counsel to call Mr. Ate's  
15 office tomorrow at -- what'd you say 11 o'clock?

16 MR. JENKINS: 11:30, sir. We have a meeting at 11  
17 o'clock.

18 THE COURT: Okay.

19 MR. JENKINS: And Mr. Ate's said it would be better  
20 for counsel there to call him at 11:30.

21 THE COURT: Okay. They will call at 11:30 tomorrow.

22 MR. JENKINS: Yes, sir.

23 THE COURT: And hopefully there won't be any  
24 miscommunications so let's try and move this along. Okay?

25 All right. Thank you very much, Mr. Jenkins.



1 MR. JENKINS: Sure.

2 THE COURT: Anybody -- well, before, does anybody else  
3 want anything else they want to raise? No. Okay. Thank you.

4 MR. ROSENBAUM: Thank you, Your Honor.

5 MR. JENKINS: Thank you.

6 MR. ROSENBAUM: And I believe that the last matter on  
7 the agenda is the Allstate adversary proceeding. My  
8 understanding is it's been resolved and approved by the Court.

9 THE COURT: Mr. Rosenbaum? It's the Western and  
10 Southern?

11 MR. ROSENBAUM: Yes, Your Honor. And that concludes  
12 today's calendar.

13 THE COURT: How have you resolved the Western and  
14 Southern matter?

15 MR. ROSENBAUM: I believe that they agreed to the  
16 similar extension of the other parties.

17 THE COURT: And what is the new date that people have  
18 agreed to?

19 MR. ROSENBAUM: I'm not clear, Your Honor. Let me see  
20 if any of my colleagues --

21 THE COURT: Does anybody know?

22 MR. ROSENBAUM: I'm sorry, Your Honor. We'll --

23 THE COURT: Okay.

24 MR. ROSENBAUM: -- follow up with you on that.

25 THE COURT: Well, if you would do this. Call one of

1 my law clerks and just make sure we know what the new date is  
2 that everybody's agreed to.

3 MR. ROSENBAUM: We'll do so, Your Honor.

4 THE COURT: Oaky. All right. Anything else anybody  
5 wants to raise today?

6 All right. We're adjourned. Thank you very much  
7 everybody.

8 MR. ROSENBAUM: Thank you, Your Honor.

9 (Whereupon these proceedings were concluded at 11:06 AM)

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RULINGS

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Line

6

Stipulation regarding JPMorgan's request for  
relief from stay approved

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Debtors' motion for order authorizing  
assumption of unexpired lease between DeVry  
Inc. and GMAC Mortgage, LLC approved

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Michael Wheeler's motion for relief from stay  
is granted solely for the purpose of  
permitting Mr. Wheeler to pursue his claims  
for monetary relief in the context of  
his pending lawsuit in the Superior Court  
of Cobb County, Georgia

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Motion concerning foreclosure of the  
properties, request for relief from stay is  
denied

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C E R T I F I C A T I O N

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I, Sharona Shapiro, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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*Sharona Shapiro*

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SHARONA SHAPIRO

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Date: February 8, 2013

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February 7, 2013

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